

**FINAL DECISION OF THE
COMMUNICATIONS AUTHORITY**

**ALLEGED MISLEADING OR DECEPTIVE REPRESENTATIONS
BY HONG KONG BROADBAND NETWORK LIMITED
IN RELATION TO THE TRANSMISSION SPEED OF
ITS BROADBAND SERVICE SET OUT IN ITS
ADVERTISEMENTS AND PROMOTIONAL MATERIALS**

Licensee Concerned:	Hong Kong Broadband Network Limited ("HKBN")
Issue:	The representations in relation to the transmission speed of HKBN's broadband service set out in its advertisements and promotional materials were alleged to be misleading or deceptive
Relevant Instruments:	Section 7M of the Telecommunications Ordinance ("TO") (Cap. 106)
Decision:	Breach of section 7M of the TO
Sanction:	Financial penalty
Case Reference:	7M/2/2-12

THE COMPLAINT

During the period from April to June 2010, the former Office of the Telecommunications Authority ("OFTA") received complaints from a consumer and two industry participants, alleging that the representations made in some of HKBN's advertisements and promotional materials (the "Materials") in relation to the transmission speed of its broadband service were misleading or deceptive. The complainants claimed that HKBN made unqualified statements in some or all of the Materials concerning the transmission speed of its "1000M"

broadband service (the “1000M Service”), when in fact the speed performance of the 1000M Service should be subject to the influence of various factors, resulting in a lower speed actually experienced by the customers.

The Materials

2. The Materials under complaint are:

- (a) a full-page advertisement, with English and Chinese versions, appearing in newspapers and magazines, featuring the word “1000M” printed in large font and below it the statements “*Transform your life.*”, “*For just \$199 per month**” (“*扭轉你的生活*”, “*月費只需\$199**” in the Chinese version) (the “1000M Advertisement”, at **Annex A**). The HKBN service registration hotline and website address appeared further below.

The asterisk “*” next to “*For just \$199 per month*” referred to the small print at the bottom which read “*Valid till May 31, 2010. Subject to terms and conditions including 24-month contract, pre-paid monthly fee of \$310 and non-refundable installation fee of \$890. The offer is applicable to designated residential buildings.*” (“*優惠期至2010年5月31日止。本計劃受有關條款及細則約束。簽約24個月，須預繳月費\$310。另收取\$890安裝費，將不會退還予客戶。服務計劃只適用於指定屋苑。*” in the Chinese version). No qualifying statement concerning the speed performance of the 1000M Service featured in the advertisement.

- (b) a set of full-page advertisements, with English and Chinese versions, appearing in newspapers and magazines. This set of advertisements came in with two variants, the first featured a clock showing the time “28 00”

while the other one featured a calendar showing the day “星期八” (the eighth day of the week). Below the clock or the calendar, the statement “*With Speed, Life is Real.*” (“速度扭轉時間觀念” in the Chinese version) was printed against a blue background in rectangular shape. Below it, still in the blue background, these statements appeared, “*The boundaries of time have just been shattered. With more speed comes more time to live. See more, feel more, and experience more.*” (“星期幾，幾點鐘，再有限制。俾你更多時間，感受生命更多。” in the Chinese version).

Below the blue rectangle, there was a smaller rectangle in orange colour with the phrase “*1000M Fibre Broadband Service \$199/month**” (“1000M 光纖寬頻 月費\$199*” in the Chinese version) printed on it. The HKBN service registration hotline and website address appeared further below.

The asterisk “*” next to “\$199/ month” referred to the small print at the bottom which read “*Valid till July 15, 2010. Subject to terms and conditions including 24-month contract, pre-paid monthly fee of \$310 and non-refundable installation fee of \$890. The offer is applicable to designated residential buildings. Local upload download speed is up to 1000Mbps*” (“優惠期至2010年7月15日止。本計劃受有關條款及細則約束。簽約24個月，須預繳月費\$310。另收取\$890安裝費，將不會退還予客戶。服務計劃只適用於指定屋苑。本地上下載速度最高為1000Mbps。” in the Chinese version).

Apart from their publication in various newspapers and magazines, an English version of the first variant and a Chinese version of the second variant were displayed on

the billboards at the Admiralty Centre in Admiralty and the entrance of the Cross Harbour Tunnel in Causeway Bay respectively. This set of advertisements is collectively referred to as the “Time Advertisements”, at **Annex B**.

- (c) a promotion leaflet in bilingual form (the “Leaflet”, a copy at **Annex C**). One side of the Leaflet featured prominently “*FibreHome 1000*”, with the statements “*From today, you can transform your life.*” and “*現在扭轉你的生活*” appearing below. On the reverse side of the Leaflet, the words “*光纖到戶 Fibre-to-the-home*”, “*1000M*” and “*\$199 月費 per month*” were prominently displayed on the top. Below them, details of the special discounts for various value-added services were provided. Near the bottom of the Leaflet, the registration hotline, registration website address, as well as the telephone number and address of an HKBN outlet were displayed. The terms and conditions of the services on offer were set out at the bottom of the Leaflet in small print, but they did not include any qualifying statement concerning the speed performance of the 1000M Service.
- (d) A full-page advertisement, with English and Chinese versions, appearing in newspapers and magazines. The phrase that was displayed prominently in the advertisement was “*Hong Kong Broadband Network Limited “Best Fixed-Line and Broadband Carrier” of Telecom Asia Awards 2010*” (“*香港寬頻榮獲 Telecom Asia 頒發「最佳固網及寬頻服務供應商*” in the Chinese version) (the “Award Advertisement”, at **Annex D**). Below the phrase, it was stated in smaller print that :

Hong Kong Broadband Network Limited is the fastest growing broadband service provider in Hong Kong. We

deliver fibre-based symmetric 100Mbps to 1Gbps broadband services with our self-built next generation network. [Emphasis original¹]*

On behalf of Hong Kong people, we are honored to accept the prestigious Telecom Asia Awards 2010 – “Best Fixed-Line & Broadband Carrier”

**Local upload and download speed*

*(香港寬頻現為香港增長速度最快之寬頻服務供應商，我們透過自建的新世代光纖網絡，提供由100Mbps至1000Mbps上下載對等*極速光纖寬頻上網服務。*

我們致力使香港發展為「光纖綠洲」，吸引更多全球商業機遇，並以香港市民利益為依歸，提供最優質卓越的寬頻上網服務。對於獲得Telecom Asia頒發「最佳固網及寬頻服務供應商」大獎，我們深感榮幸。

**本地之上下載速度*

in the Chinese version)

The Complainants' Allegations

3. One industry complainant claimed that the “M” in “1000M” as appearing in some of the Materials referred to “Mbps”² in speed, and it would be logical to construe that the speed of the 1000M Service was 1,000Mbps. The complainant provided to the former OFTA a printout of the terms and conditions downloaded from HKBN’s website which were applicable to the 1000M Service, and referred specifically to the following term:

*Maximum Local Bandwidth: 1000Mbps Upload/Download
Maximum Overseas Bandwidth: 20Mbps Upload/ Download (This*

¹ “1Gbps” (1 gigabit per second) referred to in the smaller print is equivalent to 1,000Mbps (1,000 megabits per second). See also footnote 2.

² “Mbps” or “megabit per second” is a measurement of network transmission speed by reference to how many millions of bits of data or information are transmitted in one second.

transfer rate is only suitable for the Fiber to the home connection of HKBN user. The connection speed for internet may vary due to the influence of extraneous factors. Such factors include (but not limited to) computer performance and its setting, router setting, website being browsed or performance of the service where file being uploaded/retrieved, internet congestion, network delay and other extraneous factors.) (referred to as “Speed Qualification” hereinafter)

4. Both industry complainants also managed to obtain a copy of the service registration form of HKBN in Chinese which was applicable to the 1000M Service. The consumer complainant also provided the service registration form he had signed with HKBN for the 1000M Service. All three complainants referred to the following term printed on the form, which as the former OFTA had observed was basically the Chinese equivalent of the Speed Qualification quoted in paragraph 3 above:

本地最高頻寬：1000Mbps 上/下載，海外最高頻寬：20Mbps 上/下載此傳送速度適用於以光纖到戶技術鋪設之用戶，而其上網速度可受環境因素影響而有所偏差。影響上網速度因素包括電腦的性能設定、所到之網頁或檔案所在的伺服器功能、設定及連線速度、互聯網網絡擠塞、網絡延誤、及其他環境因應[sic]等。)

5. The essence of the complainants’ allegations was that, by reference to the Speed Qualification, the 1000M Service promoted by HKBN was subject to the speed limitation of 20Mbps for overseas connection, and was only the maximum speed achievable for local connection, which was subject to a number of factors, and the actual speed performance would be affected accordingly. That the Materials did not disclose the Speed Qualification rendered the Materials misleading or deceptive.³

³ Both industry complainants referred, inter alia, to paragraph 3.11 of the “Telecommunications Authority Guidelines – Misleading or Deceptive Conduct in Hong Kong Telecommunications Markets” issued on 21 May 2003, which provides that “[S]ilence is “conduct” under section 7M and a licensee’s silence or non-disclosure may amount to misleading or deceptive conduct where it is necessary to reveal relevant facts

6. One of the industry complainants also pointed out that HKBN had not included the 1000M Service in its “Steady Speed Guarantee in Hong Kong” programme which covered HKBN’s other broadband services (e.g. 10M, 25M, 50M, 100M and 200M) (the “Speed Guarantee Programme”). Under the programme, HKBN guaranteed not less than 80% of the local uploading and downloading speeds to customers subscribing to 10M, 25M, 50M and 100M services, and 100% of the local uploading and downloading speeds to customers subscribing to 200M service. The complainant claimed that the exclusion of the 1000M Service from the Speed Guarantee Programme by HKBN implied that HKBN knew fully well that the 1000M Service could not even achieve 80% of the represented speed.

THE INITIAL ENQUIRY

7. HKBN was invited to comment on the complainants’ allegations. In its letter of 15 July 2010, HKBN explained that the limitation inherent in printed advertisement rendered it impractical to include all the terms and conditions in the advertisement. HKBN said that it was a general practice for operators to place a general disclaimer in the advertisement to raise potential customer’s awareness that the service being offered was subject to a set of terms and conditions, the details of which would be available from the relevant operators upon enquiries from the customers.

8. HKBN claimed that the general public knew that full details of the service would be made available to them prior to service registration. Therefore, it was a generally accepted market practice that a telephone hotline would be available for the general public to enquire about the information presented in the marketing material. Further, as explanation on the speed limitations was given in the service registration form, HKBN claimed that its customers would

to prevent consumers from being misled. Licensees must not mislead by half-truths or remain silent in a situation where consumers have a reasonable expectation that the licensee will provide them with specific information...”.

be informed of the speed limitations and would therefore not be misled or deceived by the speed represented in the Materials.

9. HKBN further claimed that it was clearly within the knowledge and understanding of the general public that there would be various overheads⁴ for any transmission speed and such speed would be affected by various extraneous factors.

10. With regard to the Time Advertisements which were displayed at two outdoor billboards, HKBN said that they were intended to be seen from a distance by those travelling on vehicles and no reasonable person would be expected to read the details of the advertisements.

11. As regards the Award Advertisement, HKBN alleged that it was more akin to a “press release” announcing that HKBN had won an award from a regional telecommunications publishing group. The Award Advertisement was not intended to promote any particular service. HKBN therefore did not consider that there was a need to highlight in the advertisement the salient points of its 100M and 1000M broadband services.

12. HKBN claimed that it was not the only operator publishing marketing materials that did not include information on overseas speed limitations or state the factors that might affect the actual speed performance. In this connection, HKBN submitted to the former OFTA a set of sample marketing materials and service registration forms of other operators to substantiate its claim.

13. As regards the exclusion of the 1000M Service from the Speed Guarantee Programme, HKBN said it was a pure commercial decision not to extend the programme to cover the 1000M Service in the early phases of the

⁴ In general, for any broadband connection between a broadband service provider and an end user, part of the bandwidth of the connection will be used for the transmission of network information for the purpose of flow control, authentication, error detection and correction, encryption, etc. In other words, the entire bandwidth of the broadband connection cannot be fully utilised for transmission of user data. The portion of the bandwidth used up for carrying such network information is called “overheads”.

promotion campaign to provide more flexibility for it to introduce different offers in the subsequent marketing campaigns. HKBN also added that the Speed Guarantee Programme was a separate service with its own set of terms and conditions and was not an essential element of any of the broadband services offered by HKBN.

THE INVESTIGATION

14. Having considered the comments of HKBN on the complaint allegations, and the information it provided, the former Telecommunications Authority (“TA”) considered that the Materials had not included sufficient information to alert potential customers that the actual speed performance of the 1000M Service might not reach 1000Mbps as represented. There were reasonable grounds for the former TA to suspect that there might be a breach of section 7M of the TO by HKBN. Section 7M provides that:

A licensee shall not engage in conduct which, in the opinion of the Authority, is misleading or deceptive in providing or acquiring telecommunications networks, systems, installations, customer equipment or services including (but not limited to) promoting, marketing or advertising the network, system, installation, customer equipment or service.

15. On 7 September 2010, the former OFTA commenced an investigation into the matter. HKBN was requested to give a full account of the dates and media channels through which the Materials were published, and advise whether HKBN had received any complaints in relation to the speed representations set out in the Materials. HKBN was further invited to make representations that it wished the former TA to take into account in deciding on the matter.

HKBN’s Representations

16. HKBN advised in its letter of 29 September 2010 that:

- (a) the 1000M Advertisement was published on various dates between 14 April 2010 and 31 May 2010 in 11 newspapers and ten magazines;
- (b) the Time Advertisements were published on various dates between 26 May 2010 and 17 June 2010 in 11 newspapers and eight magazines, and displayed on two billboards located at Hung Hing Road, Wanchai (i.e. at the entrance of the Cross Harbour Tunnel) and the Admiralty Centre, Admiralty between 1 June 2010 and 30 June 2010;
- (c) copies of the Leaflet were only distributed by HKBN staff at its Lok Fu Plaza outlet between late April and early June 2010; and
- (d) the Award Advertisement was published on various dates between 3 May 2010 and 13 May 2010 in six newspapers and three magazines;

Full details are set out in **Annex E**.

17. HKBN also advised that it had received a few enquiries about the Materials but all of them had been resolved and there was no established complaint. No details were however provided by HKBN in relation to these enquiries.

18. HKBN submitted that in Hong Kong, references to “1.5M”, “3M”, “8M”, “10M”, “100M” and the like were used as “codes” as the names of the services. The “M” was generally pronounced as “mag” and gave certain hints on the transmission speed of the service being offered. HKBN submitted that the actual speed of its 1,000Mbps broadband service was “highly close” [HKBN’s own wording] to the “code” 1000M. In fact, the actual bandwidth available [to its 1,000Mbps service] “highly matched” [HKBN’s own wording]

with the claimed speed. Since the massive promotion of its 1,000Mbps service in April 2010, HKBN's technicians would perform speed tests for newly installed 1000Mbps broadband connections in customers' premises using ordinary user level netbook/notebook computers. HKBN produced to the former OFTA records of such tests conducted between April 2010 and September 2010. HKBN stated that after the deduction of normal transmission overheads, the average speed performance was approximately 70% to 80% of the claimed 1000Mbps. HKBN argued that the speed performance was "highly in line" [HKBN's own wording] with the "code" 1000M and the generally accepted market practice.

19. HKBN submitted that it was clearly within the knowledge and understanding of the general public that there would be various overheads for any transmission speed and such speed would be affected by environmental factors. It reiterated the point made in its letter of 15 July 2010 (paragraph 12 above) that other operators similarly did not include information on overseas speed limitations or state the factors that might affect the actual speed performance in their marketing materials. The purpose of HKBN referring to other operators' practices was to demonstrate what disclosures were reasonably expected in the Hong Kong broadband services market.

20. HKBN submitted that the former OFTA should interpret section 7M of the TO with the developments of the market in mind such that its enforcement would not fetter creative commercial promotions. In particular, HKBN argued that it would be incorrect for the former OFTA to interpret paragraph 22 of the former TA's statement "*Misleading or Deceptive Representations Concerning the Provision of Residential Broadband Internet Access Services to Consumers in Hong Kong*" issued on 27 February 2008⁵ (the "TA Statement on Broadband Representations" at **Annex F**) as requiring mandatory notice [about speed qualifications] be given without regard to the

⁵ Paragraph 22 of the TA Statement on Broadband Representations says "*In particular, claims about the transmission speed of the service must be clearly and prominently qualified by a description of which segment and direction of the pathway between the destined pages on the world wide web and a consumer's computer the speed claim relates to, and what that speed means for the typical use most people in the potential audience are likely to have for the service.*" See also paragraph 34.

context. Such an interpretation would create an unrealistic straitjacket for, and place an unfairly onerous regulatory burden on, HKBN.

21. HKBN submitted that the former OFTA should review the case from the perspective of a reasonable subscriber, in terms of what information he would have received prior to the confirmation of the service registration. HKBN said the former OFTA should review the entire advertising campaign and HKBN's customer acquisition procedure in its totality but not on the individual advertising materials in a piecemeal manner.

22. Subsequent to the submissions made by HKBN in September 2010, there was further exchange between HKBN and the former OFTA. The case continued to be processed by the Office of the Communications Authority ("OFCA") when the Communications Authority ("CA") was established on 1 April 2012.

OFCA'S ASSESSMENT

Nature of the Materials

23. Having considered the information available and taking into account the representations made by HKBN, OFCA is of the view that the 1000M Advertisement, the Time Advertisements and the Leaflet were all for promoting the 1000M Service. The monthly fee for the 1000M Service as well as information about the channels (registration hotline and website) through which potential customers could register for the 1000M Service featured in all these materials. The terms and conditions of the 1000M Service were set out at the bottom of these materials. In the case of the Leaflet, the address of a specific HKBN outlet was given so that potential customers could ask for further information about the 1000M Service and/or subscribe to the 1000M Service at the outlet.

24. On the other hand, OFCA considers that the Award Advertisement was more in the nature of brand-building for HKBN. Its main message was that

HKBN was the recipient of the “Best Fixed-line and Broadband Carrier” award granted by a regional telecommunications publishing group. Although the advertisement referred to HKBN delivering “*fibre-based symmetric 100Mbps to 1Gbps broadband services*”, no particular service plan was promoted. There was no mention of any service charge. No terms and conditions applicable to the subscription of services were set out. It was HKBN’s main website address that was printed on the Award Advertisement, rather than the service registration website and/or hotline telephone number. Considering the advertisement as a whole, OFCA is of the view that the reference to “*symmetric 100Mbps to 1Gbps broadband services*” was more for demonstrating what HKBN considered to be its competitive edge, namely providing high speed fibre-based broadband services using its self-built network, rather than promoting its 100Mbps or 1Gbps broadband services.

The Target Audience

25. In considering whether a licensee has engaged in misleading or deceptive conduct in contravention of section 7M of the TO, there is a need for the CA to consider whether a “reasonable person” would be misled or deceived by the licensee’s alleged conduct.⁶ A “reasonable person” in this context is an ordinary member of the target audience of the conduct i.e. a person at whom the conduct is directed.⁷

26. Where the conduct involves publication of advertising materials promoting broadband services targeting the general public, the former TA has

⁶ “Telecommunications Authority Guidelines – Misleading or Deceptive Conduct in Hong Kong Telecommunications Markets” issued on 21 May 2003”. Paragraph 2.10 reads, “[T]he [CA] must form an opinion as to whether a licensee is engaging, or has engaged, in misleading or deceptive conduct. In forming his opinion, the [CA] will make an assessment of all of the circumstances of the conduct. He will examine the facts and ask whether a “reasonable person” would be misled or deceived by the licensee’s conduct”.

⁷ “Telecommunications Authority Guidelines – Misleading or Deceptive Conduct in Hong Kong Telecommunications Markets” issued on 21 May 2003”. Paragraph 2.11 reads, “[A] “reasonable person” is an ordinary member of the target audience of the conduct; that is, a person at whom the conduct is directed. If, for example, a licensee runs an advertising campaign in the local newspaper, the target audience (and, accordingly, the care required of the licensee to ensure the “reasonable person” in the target audience is not misled or deceived) may be different from the target audience and the care which is required of a licensee when offering a service to large corporate customers. In other words, the level of comprehension expected, and therefore the standard of care required by the licensee, will differ depending on the target audience”.

stated in a section 7M decision (Case No T47/07 decided in May 2008)⁸ that the “reasonable person test” should be applied by considering whether a broad stratum of people possessing varying degrees of understanding of broadband services would be misled by the representations in question. Case No T47/07 similarly involved HKBN making speed representations of its broadband services in local newspapers and magazines. Specifically, the former TA stated in paragraph 20 of the case summary that:

*The general public comprises a broad stratum of people who possess understanding of broadband at varying degrees. On the one end, there are people who know more about broadband than others. They are well versed in factors that can affect the speed performance. At the other end, there are people who cannot be assumed to know that the speed performance of broadband services is subject to qualifications. There are also people in the middle of the stratum. All these people were nonetheless target audience of the advertisements. **The Authority therefore has to be satisfied that even the target audience at the lower end of the stratum, which the Authority considers is a reasonably sized group, would not be misled or deceived by the advertisements over the speeds of HKBN’s broadband services.** [Emphasis added]⁹*

The former TA’s approach remains applicable to this case.

27. The 1000M Advertisement, the Award Advertisement and the Time Advertisements were published in all the major local newspapers and

⁸ The case summary can be found in http://tel_archives.ofca.gov.hk/en/ca_bd/case_closed/t47_07.pdf.

⁹ See also the judgment of the Telecommunications (Competition Provisions) Appeal Board in Case 23 of 2006 on 24 April 2007: <http://www.cedb.gov.hk/ctb/eng/telecom/doc/Case23-Judgement.pdf>. Paragraph 32 stated, “[a]s already noted, the intended audience of the impugned promotional materials was the general public. The class of the target audience possesses a wide range of characteristics. Therefore, when one reads the Authority’s Guidelines as to identification of “a reasonable person”, it is important to appreciate that the exercise is not to identify the characteristics of the one “reasonable person” to represent the class, but to identify a range among the target audience which would constitute “the reasonable person”, or in the present case, the notional “ordinary broadband users”.

magazines, of which only five (*PC Market, eZone, Hi-tech Weekly, PC 3 Weekly, and HD AV*) of the magazines could be regarded as “expert” magazines, whose readers might be assumed to have more technical knowledge in relation to information/broadband technology. The Time Advertisements were also displayed on billboards situated at the entrance of the Cross Harbour Tunnel in Causeway Bay and Admiralty Centre in Admiralty for commuters and passers-by to see. As for the Leaflet, copies were distributed by HKBN’s staff at the outlet located at Lok Fu Plaza. Given the manners in which the Materials were published or distributed, OFCA considers that the target audience of the Materials was the general public.

28. On applying the “reasonable person” test as per the approach adopted in Case T47/07, the CA would need to be satisfied that even the target audience (namely the general public) at the lower end of the stratum would not be misled or deceived by the Materials over the speed representations made in relation to the 1000M Service.

The Speed Representations

29. The 1000M Advertisement, the Time Advertisements and the Leaflet all promoted the 1000M Service. HKBN in its submission referred to “1000M” as a “code”, and that the “M”, pronounced as “mag”, was concerned with the transmission speed. OFCA agrees that in the industry and among the general public, the alphabet “M” when combined with a numerical figure in front in the context of promotion of broadband services, would be pronounced as “mag” or “meg”, and be understood to mean “megabits per second”, or more generally the speed of the broadband service being offered. On the whole, OFCA considers that HKBN did not dispute that the reference to “1000M” was that the speed of the broadband service being promoted was 1,000Mbps.

30. In respect of the 1000M Advertisement, the word “1000M” was printed in large font size and placed at the very centre to catch readers’ attention. This in itself was a representation of the speed of the 1000M Service. Below “1000M” there was the statement “*Transform your life*”. Considered in its entirety, a reasonable interpretation of advertisement by the general public

would be that subscription of HKBN's broadband service at the speed of 1,000Mbps would transform a one's life, at the price of "just" \$199 per month.

31. In respect of the Time Advertisements, the centre of attraction in the two variants was respectively the image of a clock showing the fictitious time "28:00", and the image of a calendar showing the fictitious day "eighth day of the week". This was supplemented by a clause printed against a blue rectangular background, "*With Speed, Life is Real*" with the elaboration, "*The boundaries of time have just been shattered. With more speed comes more time to live. See more, feel more, and experience more*". The emphasis was on "speed" which would allow more time at one's disposal. Below these, printed against an orange rectangular background, the 1000M fibre broadband service was promoted at \$199 per month. Taken in their entirety, OFCA considers that a reasonable interpretation of the Time Advertisements by the general public would be that the speed of the 1000M Service, namely 1,000Mbps, was emphasised as the prominent feature of the service.

32. As for the Leaflet, one side of it featured prominently "*FibreHome1000*" and the statement "*From today, you can transform your life*". On the top of the reverse side of the Leaflet, it was featured prominently that the fibre-to-the-home 1000M Service was at \$199 per month. Again, the overall impression that the Leaflet created was that it was placing emphasis on the speed of the 1000M Service, which would "transform" one's life. The Leaflet also listed other value-added services at special discount prices, but the key message of the Leaflet taken by the general public who received the leaflets was no doubt that HKBN was promoting the 1000M Service, other services being only supplementary services adding extra value to the 1000M Service.

33. On the other hand, with regard to the Award Advertisement, as per the analysis in paragraph 24 above, it was in the nature of enhancing HKBN's brand image rather than promoting any specific service. The general public, upon seeing the advertisement, would have the impression that HKBN was publicising its being awarded the "Best Fixed Line and Broadband Carrier" by Telecom Asia. The general public would unlikely consider the reference to "*fibre-based symmetric 100Mbps to 1Gbps broadband services with our*

self-built next generation network” as a claim on speeds on the part of HKBN with a view to promoting any specific broadband services.

34. With regard to speed representations, the former TA issued the TA Statement on Broadband Representations on 27 February 2008 which set out, inter alia, the following best practice indicator as regards the need to include relevant qualifications over references to the technical performance of residential broadband services, especially in relation to claims on the transmission speed of the services:

21. *References to the technical performance of the service must be accompanied by all relevant qualifications concerning that performance.*
22. *In particular, **claims about the transmission speed of the service must be clearly and prominently qualified** by a description of which segment and direction of the pathway between the destined pages on the world wide web and a consumer’s computer the speed claim relates to, and what that speed means for the typical use most people in the potential audience are likely to have for the service. [Emphasis added]*
23. ***The qualifications must reflect the expectations which most of the people in the potential audience are likely to have for their use of the service, as well as the likelihood that many in the potential audience may not be technology savvy.** [Emphasis added]*

35. In assessing whether a piece of advertising material is misleading or deceptive under section 7M of the TO, there is a need for the CA to apply the reasonable person test (see paragraph 28) and consider the material in question on a case by case basis and in its own context, by reference to the nature of the material, the target audience, the medium being used, the overall impression conveyed by the material to the target audience etc. That said, where a piece of

advertising material promotes a residential broadband service and makes a speed claim or refers to the speed of the service, the best practice indicator set out in the paragraph above would be relevant reference for determining whether qualifications as regards the speed performance are necessary or sufficient in the circumstances, in order not to create a misleading or deceptive impression on the target audience as to the speed performance of the service.

The 1000M Advertisement

36. The 1000M Advertisement promoted the 1000M Service and made a representation that the speed of the 1000M Service was 1,000Mbps (see paragraph 30). The advertisement did not include the qualifications that were found present in HKBN's terms and conditions and service registration form in relation to the speed performance, namely that the speed of 1,000Mbps was only the maximum speed that applied locally, that the maximum speed that applied to overseas connection was 20Mbps, and that the speed performance was subject to a number of factors that would affect the actual speed performance (see paragraphs 3 and 4).

37. The overall impression projected by the 1000M Advertisement was that the claimed speed of 1,000Mbps was simply *the* speed that was achievable, which would make a difference to the user compared with conventional lower speed broadband services, thereby transforming one's life. The reality was however that the speed was only the maximum that applied locally. The maximum bandwidth provided by HKBN for overseas connection was only 20Mbps, a mere 2% of the 1,000Mbps as represented. This was a very substantial reduction of the speed that was not made known in the advertisement. Further, by reference to the speed tests records produced by HKBN (see paragraph 18), OFCA notes that the average speed performance of the 1000M Service for local speed connection was indeed approximately 70% to 80% of the claimed speed. However, this was only the "average" performances of the total 68 tests conducted. In reviewing the speed performance of each test, OFCA notes that in 20 of the tests conducted out of 68 tests, the actual download speeds recorded ranged between 650Mbps and 697Mbps. Overall speaking, the speed reduction as revealed by the speed tests

records could not be regarded as insignificant compared with the advertised speed.¹⁰ Given the way the advertisement was presented, the target audience, especially those at the lower end of the stratum could not be expected to know from reading the advertisement that the speed of 1,000Mbps was in fact not *generally* available during actual usage, and that the speed performance could in fact be *substantially* reduced if connection was made to overseas, or be reduced to a certain extent due to other extraneous factors for local connection. On this basis, applying the reasonable person test (paragraph 28), the omission of the qualifications in the 1000M Advertisement as regards the speed performance of the 1000M Service would render the advertisement misleading or deceptive in breach of section 7M.

38. HKBN argued that it would be impractical to include all the terms and conditions in an advertisement and that a general disclaimer stating that the offer was subject to terms and conditions was sufficient to raise potential customer's awareness about various speed limitations. OFCA does not consider HKBN's argument valid. The 1000M Advertisement made a specific representation about the speed of the service. In the absence of express qualifications, the target audience, which were the general public, would have a reasonable expectation that 1000Mbps was the speed they would get by subscribing to the 1000M Service. OFCA fails to see how the target audience, simply by noting the "terms and conditions apply" disclaimer in small print, would become aware that 1000M Service would be subject to speed limitations that could *substantially* reduce the speed performance of the service.

39. HKBN also contended that it was within the knowledge and understanding of the general public that full details of the service (including the speed limitations) would be made available to them prior to service registration. In addition, if a potential customer had any doubts or enquiries about the information presented in the marketing materials, he could always find out more through calling the service hotline. In the present case, HKBN argued that the explanations about speed limitations in the service registration form should

¹⁰ As for the upload speed, there was 1 test out of the 68 tests where the actual speed was measured at 670Mbps.

be sufficient to alert HKBN's potential customers so that they would not be misled or deceived by the speed claim in the advertisement.

40. Similar argument was refuted by the Telecommunications (Competition Provisions) Appeal Board (the "Appeal Board") in its decision on Appeal No of 30 June 2009.¹¹ In that case, an argument was made on behalf of the appellant that there could not be any contravention of section 7M of the TO unless the conduct in question was misleading or deceptive in "providing", as opposed to "offering" telecommunications services. Even if there had been any misleading conduct in the process of the sales promotion¹², the appellant argued that it would have been detected and clarified during the quality control (QC) verification process¹³, which would take place before the appellant actually provided the services. Accordingly, there would have been no provision of telecommunications services by the appellant and thus there would have been no contravention of section 7M. The Appeal Board did not accept such an argument. The Appeal Board was of the view that section 7M covered conduct in "promoting" a telecommunications service. Further, the conduct of the salespersons in that case in promoting services was properly to be characterised as "first contact deception" which enticed the customer into the marketing web. Accordingly, the argument raised by the appellant that had this conduct occurred it would have been picked up in the subsequent QC verification process was not sufficient to prevent the conduct under complaint being in breach of section 7M at the time the statements were made.¹⁴

41. The Appeal Board has confirmed that section 7M applies to conduct in "promoting" a telecommunications service.¹⁵ A customer would be enticed into the marketing web upon being attracted by a newspaper

¹¹ http://www.cedb.gov.hk/ctb/eng/telecom/doc/Decision_Case_26.pdf.

¹² The case involved two direct sales scenarios in which the salespersons made misleading or deceptive statements in relation to the services being offered.

¹³ This referred to the verification process conducted by telephone by the appellant with the customer who had signed a service contract to verify the terms and conditions of the service contract.

¹⁴ Paragraphs 58 and 59 of the decision.

¹⁵ Indeed, section 7M provides that "*a licensee shall not engage in conduct which... is misleading or deceptive in providing or acquiring... including (but not limited to) **promoting, marketing or advertising** the network, system, installation, customer equipment or service*". [Emphasis added].

advertisement promoting a telecommunications service. If a licensee publishes an advertisement which contains misleading or deceptive statements, it will be in breach of section 7M. This is irrespective of the fact that, if and when the contract is signed, the misleading or deceptive statements may have been corrected or rectified by the licensee before providing the service.

42. OFCA notes that the 1000M Advertisement was publicised on a large scale in local newspapers and magazines between April and May 2010. Back in February 2008 however, the former TA had already issued the TA Statement on Broadband Representations advising residential broadband services providers to appropriately qualify claims about the transmission speed of a broadband service. Furthermore, in May 2008, HKBN was found by the former TA to be in breach of section 7M of the TO in Case No T47/07 for failing to mention in the advertisements the 20Mbps overseas connection limitation when promoting its 100Mbps and 1,000Mbps broadband services. HKBN did not seem to have properly taken into account the TA Statement on Broadband Representations and the lesson they had learnt from Case No T47/07 in designing their publicity materials which included speed representations in relation to their broadband services.

The Time Advertisements

43. Similar to the 1000M Advertisement, the Time Advertisements also placed strong emphasis on the speed element of the 1000M Service. The statements “*With Speed, Life is Real*” and “*The boundaries of time have just been shattered. With more speed comes more time to live. See more, feel more, and experience more*” were reinforced by the images of a clock and a calendar showing fictitious time and day respectively. The impression given to the general public would be that the speed of the 1000M Service was so fast that users would have more time to enjoy their lives.

44. In the Time Advertisements, the speed claim was qualified by the small print “***Local*** upload/download speed is up to 1000Mbps” (Emphasis added). Although the Time Advertisements were silent on the fact that the maximum overseas speed limit was only 20Mbps, OFCA considers that the

small print would serve to alert the general public that the claimed speed of 1,000Mbps was only the *local* connection speed, so that it would be unlikely for them to expect that the speed would apply also to overseas connection. As such, OFCA considers that applying the reasonable person test (paragraph 28), the failure to mention the overseas speed limit of 20Mbps in the Time Advertisements would not render the advertisements misleading or deceptive.

45. OFCA is however concerned that the mere reference to “*Local upload/download speed is up to 1000Mbps*” (Emphasis added) in small print in the Time Advertisements might not be sufficient to alert the target audience that the speed of the 1000M Service could be subject to various factors which would reduce the speed for local connection to a not insignificant extent. As the speed of the service was highlighted as a distinguishing feature in the Time Advertisements, the target audience would have attached importance to the speed element when considering whether to subscribe to the service. As such, it was all the more important for HKBN to set out the qualifications that would affect the local speed performance in order not to mislead the target audience. OFCA takes the point that the small print had indicated that 1,000Mbps was the maximum local speed provided by HKBN. However, on the balance of probabilities, OFCA considers that this statement would not be sufficient to convey the message to the general public, especially those at the lower end of the stratum whom could not be assumed to be technology savvy, that the actual speed for local connection could be lower than 1000Mbps to a not insignificant extent that¹⁶ might affect the purchase decision of a member of the general public.

46. The Time Advertisements appeared not only in local newspapers and magazines, but were also displayed on billboards which would be seen from a distance by commuters travelling on vehicles. OFCA notes as a fact that the Time Advertisements displayed on the billboards contained the same small print that appeared in the newspapers and magazine versions. However, OFCA takes HKBN’s point that commuters on vehicles would not be expected to read

¹⁶ See paragraph 37.

the details of the advertisements. OFCA wonders whether drivers or passengers on vehicles would pay too much attention to the fact that the 1000M Service was being promoted on seeing the billboards, given that the reference to “1000M” was, comparatively speaking, less prominently displayed than the image of the fictitious clock or calendar. The Time Advertisements appearing on the billboards would instead have the effect of raising brand recognition than promoting the 1000M Service.

47. Taking into account the medium used by HKBN for the Time Advertisements, and by reference to the assessment made in paragraphs 45 and 46, OFCA considers that applying the reasonable person test (paragraph 28), the Time Advertisements that were published in newspapers and magazines were misleading or deceptive in breach of section 7M of the TO, on the basis that there was a lack of sufficient qualifications as regards the speed performance of the 1000M Service for local connection.

The Leaflet

48. As per OFCA’s analysis in paragraph 32 above, the overall impression that the Leaflet created was that it was placing emphasis on the speed of the 1000M Service, which would “transform” one’s life. No qualification was included in the Leaflet to explain that the speed of 1,000Mbps was only the maximum speed that applied locally, that the maximum speed that applied to overseas connection was 20Mbps, and that the actual speed performance was subject to a number of factors.

49. Copies of the Leaflet were distributed by the staff of HKBN’s outlet in Lok Fu Plaza. The recipients of the Leaflet would be the general public. Upon receipt of the Leaflet, a member of the public at the lower end of the stratum in terms of their knowledge about broadband services could not be expected to know from reading the Leaflet that the speed of 1,000Mbps was in fact not *generally* available during actual usage, and that the speed performance could in fact be *substantially* reduced if connection was made to overseas, or be reduced to a certain extent due to other extraneous factors for local

connection.¹⁷ On this basis, applying the reasonable person test (paragraph 28), the omission of the qualifications in the Leaflet as regards the speed performance of the 1000M Service would render the Leaflet misleading or deceptive in breach of section 7M of the TO.

The Award Advertisement

50. As OFCA has analysed in paragraph 24, the subject matter being promoted by the Award Advertisement was the company brand of HKBN as the “*Best Fixed-Line & Broadband Carrier*” in Telecom Asia Awards 2010. The general public, on seeing the Award Advertisement, would unlikely consider that HKBN was promoting any specific broadband services. Following on this, it would be unlikely for the general public to have been misled or deceived by the reference to “*100Mbps to 1Gbps broadband services*” into believing that 100Mbps or 1Gbps was the actual speed that they would experience upon subscription of the services, because they would unlikely perceive that HKBN was promoting 100Mbps or 1Gbps broadband service in the first place. On this basis, OFCA considers that no breach under section 7M of the TO is established in relation to the Award Advertisement.

Other Issues Addressed by HKBN

51. HKBN claimed that it was not the only licensee not including speed limitations in the marketing materials, and submitted marketing materials and service registration forms of other operators to substantiate its claim. OFCA considers that the focus of this case is whether the speed representations made by HKBN in the Materials would be in breach of section 7M. As such, assessment of the Materials would have to be made in their own context, and whether the marketing materials of the other operators might or might not be in breach of section 7M is irrelevant to this investigation. That said, OFCA has nonetheless reviewed those marketing materials supplied by HKBN and noted that the materials either did not make any specific speed representations at all,

¹⁷ See also the analysis in paragraph 37.

or had specified the relevant segment of pathway within which the broadband speed applied and/or stated the extraneous circumstances under which the speed of the service might be affected. In the service registration form of one operator, there was even an express statement that the operator would not guarantee the bandwidth individual customers would enjoy. OFCA therefore fails to see how the marketing materials of the other operators would help support HKBN's case that it was the general market practice not to provide qualifications where a speed representation was made in relation to a broadband service.

52. HKBN also addressed one industry complainant's claim in relation to its non-inclusion of the 1000M Service in the Speed Guarantee Programme. The complainant claimed that such non-inclusion implied that HKBN had known fully well that the 1000M Service could not even achieve 80% of the represented speed. HKBN's response was that it was a pure commercial decision on its part not to include the 1000M Service in the Speed Guarantee Programme. OFCA considers that HKBN's non-inclusion of the 1000M Service in the Speed Guarantee Programme was of little probative value in showing that HKBN had known that the 1000M Service could not even achieve 80% of the represented speed, and there could be a number of reasons, commercial or otherwise, underlining HKBN's decision not to include the service into the programme. In any case, HKBN had produced actual test records to show that the average speed performance was approximately 70% to 80% of the claimed 1000Mbps.

THE CA'S ASSESSMENT AND DECISION

53. After examining the facts of the case, the information/representations provided by the complainants and HKBN, including the further representations submitted by HKBN of 12 October 2012, the CA affirms OFCA's assessment that HKBN had engaged in misleading or deceptive conduct in breach of section 7M of the TO in relation to (1) the 1000M Advertisement; (2) the Time Advertisements as appearing in newspapers and magazines; and (3) the Leaflet ("Materials in Breach"). A financial penalty should be imposed.

54. This is the fifth occasion on which a financial penalty is imposed on HKBN under section 7M of the TO, and the maximum penalty stipulated by the TO is \$1,000,000. In considering the appropriate level of financial penalty in this case, the CA has had regard to the Guidelines on the Imposition of Financial Penalty issued under Section 36C of the TO (the “Guidelines”). Under the Guidelines, the CA is to consider the gravity of the breach (such as the nature and seriousness of the infringement, damage caused to third parties by the infringement, and duration of the infringement), whether the licensee under concern has previous records of similar infringements, and whether there are any aggravating and mitigating factors.

55. In considering the gravity of the breach and therefore the starting point for the level of penalty, the CA notes, first of all, that the breach is a substantive one in the context of competition in the broadband market. Transmission speed is a key feature that helps differentiate the services provided by competing broadband service providers. It is therefore important that when promoting the speed of their services, services providers should ensure that important elements and qualifications over the speed performance are not left out from the advertising and promotion materials, giving rise to the likely effect of misleading or deceiving the potential customers.

56. The CA also notes that the Materials in Breach, in particular the 1000M Advertisement and the Time Advertisements, were the embodiment of a large scale advertising campaign that promoted the 1000M Service during the period from April to June 2010. Both the 1000M Advertisement and the Time Advertisements appeared in full page size in the most widely circulated paid and free newspapers and popular magazines in Hong Kong. Readers of the newspapers and magazines could not have missed the advertisements given their prominent presence. The publicity in newspapers and magazines was complemented by copies of the Leaflet being distributed through HKBN’s salespersons at its Lok Fu Plaza outlet between late April and early June 2010. Overall speaking, the Materials in Breach were likely to create quite a lasting impression on the target audience over the speed provided by HKBN’s 1000M Service.

57. Further, as mentioned in paragraph 34 above, the former TA issued the TA Statement on Broadband Representations in February 2008 which specifically reminded broadband service providers that claims about the transmission speed of the broadband service must be clearly and prominently qualified. The former TA had made clear in paragraph 27 of the TA Statement on Broadband Representations that “[i]n those cases in which the Authority determines that section 7M has been breached, the degree to which the broadband service provider in question has sought to implement the above Best Practice Indicators will be a relevant factor in determining an appropriate sanction”. HKBN did not seem to have properly taken into account the advice given in the TA Statement on Broadband Representations.

58. In consideration of the above and having regard to the maximum applicable penalty of \$1,000,000, the CA is of the view that the appropriate starting point for determining the level of financial penalty is \$280,000.

59. The Guidelines specify that “where there are previous records of similar infringements committed by the licensee of the person concerned, the starting point of the financial penalty may be multiplied after taking into account the number of previous similar infringements”¹⁸.

60. HKBN was found in breach of section 7M on two previous occasions in relation to certain printed advertisements promoting its broadband speeds, in January 2005¹⁹ and May 2008²⁰ respectively. In particular, the circumstances in which HKBN was found in breach in Case No T47/07 in May 2008 were very similar to those of the 1000M Advertisement in the present case. In the 2008 case, the former TA found HKBN to be in breach of section 7M for failing to mention in the advertisements the 20Mbps speed limitation imposed on its 1000Mbps and 1,000Mbps broadband services in respect of connection to overseas.

¹⁸ Paragraph 8 of the Guidelines.

¹⁹ Case No T125/03: http://tel.archives.ofca.gov.hk/en/ca_bd/case_closed/t125_03.pdf.

²⁰ Case No T47/07.

61. Taking into account the two previous cases of contravention, in particular Case No T47/07, the CA considers that the starting point of the financial penalty of \$280,000 should be increased by 50%, to \$420,000.

62. On mitigating factors, the CA notes that OFCA has only received one consumer complaint about the Materials in relation to HKBN's failure to provide qualifying statements on the speed representations. There is no evidence to suggest that a large number of consumers were actually induced to take up the 1000M Service under the belief that the claimed broadband speed would be the actual service speed for both local and overseas connections.

63. Further, the complaints were first brought to the attention to HKBN by the former OFTA in June 2010. The CA notes that as early as from July 2010, HKBN's advertisements promoting its 100Mbps broadband service included speed qualifications which read, "[m]aximum local upload / download speed is 100Mbps, maximum overseas upload/download speed is 20Mbps. The actual speed may be affected by other extraneous factors."²¹ This would serve to indicate that HKBN had since taken positive steps to improve its marketing materials with a view to providing clearer explanations as to what the speed of the broadband service represented. The CA also notes that HKBN has been cooperative throughout the investigation.

64. The CA has not been able to establish any aggravating factors.

65. Having carefully considered the circumstances of the case and taking all factors into account, the CA concludes that in this case of the fifth occasion on which a financial penalty is imposed under section 7M of the TO on HKBN, the penalty which is proportionate and reasonable in relation to the breach concerned is \$300,000.

The Communications Authority November 2012

²¹ The advertisements which the former OFTA has kept were advertisements placed by HKBN in local Chinese and English newspapers between July and November 2010 promoting its 100Mbps broadband service.



1000M

Transform your life.

For just \$199 per month*

Hotline: 3613 1000
apply.hkbn.net/en/1000

*Valid till May 31, 2010. Subject to terms and conditions including 24-month contract, pre-paid monthly fee of \$310 and non-refundable installation fee of \$890. The offer is applicable to designated residential buildings.



1000M

扭轉你的生活

月費只需\$199*

登記熱線：3498 3498
apply.hkbn.net/1000

*優惠期至2010年5月31日止。本計劃受有關條款及細則約束。簽約24個月，須預繳月費\$310。另收取\$890安裝費。將不會派發予客戶。服務計劃只適用於指定屋苑。



**With Speed,
Life is Real.**

The boundaries of time have just been shattered. With more speed comes more time to live. See more, feel more, and experience more.

1000M
Fibre Broadband
Service
\$199/month*

Hotline: 3613 1000 apply.hkbn.net/en/1000

*HKBN 1000M Fibre Broadband Service is subject to terms and conditions including 24-month contract, prepaid meter, fee of \$100 and non-refundable. The offer is available in designated residential buildings. Limited time offer. Speed up to 100Mbps.



速度
扭轉時間觀念

星期幾，幾點鐘，再冇限制。
俾你更多時間，感受生命更多。

1000M
光纖寬頻
月費\$199*

登記熱線：3498 3498 apply.hkbn.net/1000

*優惠期至2010年7月31日止。本計劃設有儲備款及限制期。限制24個月。月費\$199。另收\$180安裝費。若干資料顯示有戶。服務計劃只適用於住宅用戶。本地上下寬頻服務最高為1000Mbps。



(Eighth day of the week)

With Speed,
Life is Real.

The boundaries of time have just been shattered. With more speed comes more time to live. See more, feel more, and experience more.

1000M
Fibre Broadband
Service
\$199/month*

Hotline: 3613 1000 apply.hkbn.net/en/1000

*\$199/mo. \$1,000. Subject to terms and conditions including 1-year contract, porting fees, and a \$200 and non-refundable installation fee of \$199. The offer is applicable to designated residential buildings. Limited bandwidth speed is up to 100Mbps.



速度 扭轉時間觀念

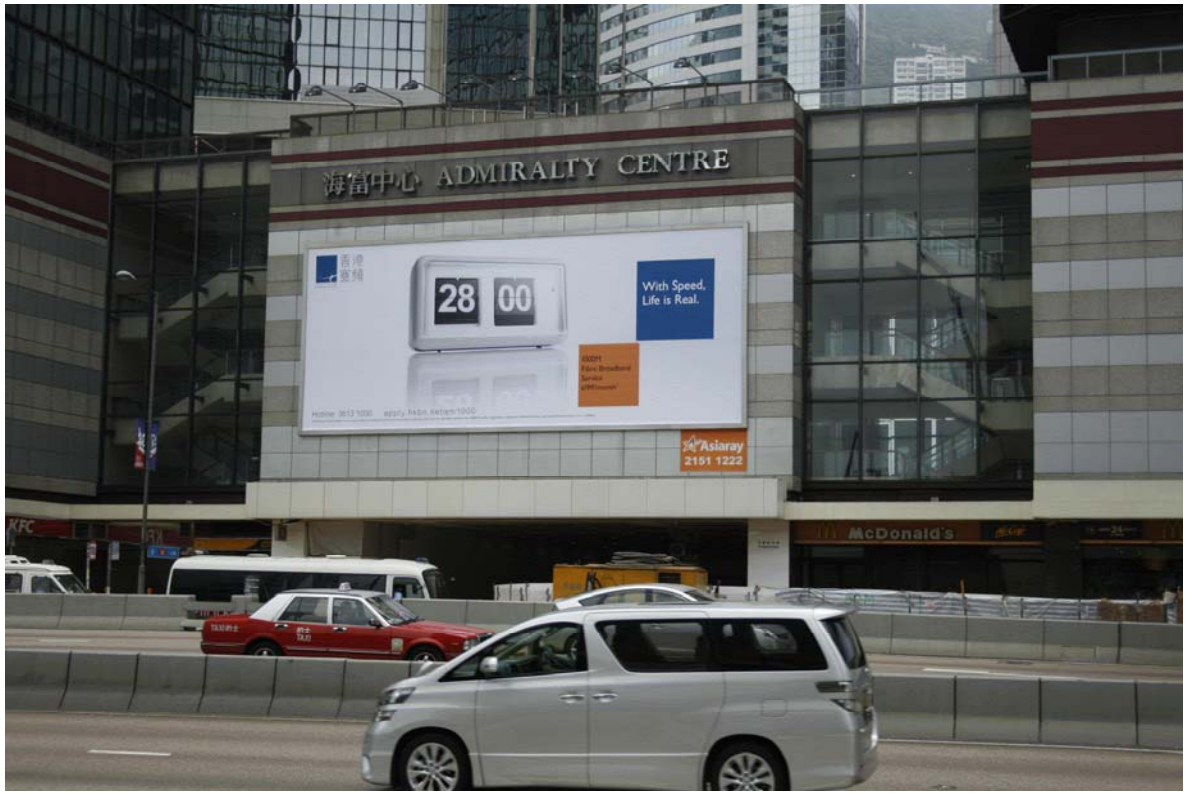
星期無，幾點鐘，再冇限制。
俾你更多時間，感受生命更多。

1000M
光纖寬頻
月費\$199*

登記熱線：3498 3498 apply.hkbn.net/1000

*優惠期至2010年7月15日止，申請需預先繳納安裝及調用費用。限於24個區，詳情請電3498 3498。公共屋邨及住宅單位，需預先繳納安裝及調用費用。申請上/下電話最高為1000Mbps。





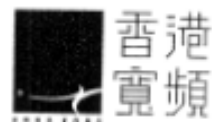
FibreHome

From today, you can transform your life.

現在扭轉你的生活



我最喜愛家用寬頻網絡服務供應商大獎
My Favourite Residential Broadband Service Provider Award





光纖到戶 1000M \$199^{月費} Fibre-to-the-home 1000M per month

以優惠價附加下列服務 (合約期24個月) 每月額外付費
Special discounts to subscribe below Value-added Services (24-month contract) Additional monthly fee

家居電話 +\$20
Home Telephone Service

家居電話連增值服務組合 +\$30
Home Telephone Service with Value-added Combo
來電顯示、來電待接、電話會議、拒接停示者、來電轉駁及遙控來電轉駁
Caller Display, Call Waiting, Conference Call, Block-the-blocker, Call Forwarding and Remote Call Forwarding

 +  + **bbTV 組合頻道** +\$40
Combo Pack
(基本頻道組合 / 娛樂頻道組合 / 學習頻道組合 / 歷險頻道組合, 任選其一)
(Basic Combo / Entertainments Combo / Educations Combo / Adventures Combo, select 1 out of 4)

 +  + **6條Discovery頻道 + bbTV 精選頻道** +\$70
Channels Selected Pack
飽覽超過90條精彩頻道
Over 90 fabulous channels for you to enjoy

 +  + **6條Discovery頻道 + bbTV 至尊頻道** +\$90
Channels Premium Pack
包括  +  等超過90條熱播頻道
Include over 90 hot channels

 **登記熱線** 樂富廣場3127舖
Registration Hotline Tel: 9666 4302

 **登記網址** apply.hkbn.net/1000

 **香港寬頻**

客戶須繳付安裝費\$800，不設退還。Subscriber must pay for installation charge of \$800, which is non-refundable.
1. 客戶必須於2010年5月31日或之前登記香港寬頻有限公司「香港寬頻」123寬頻服務。2. 本計劃只適用於香港寬頻指定區域之新登記及於2010年5月31日前成功安裝「香港寬頻」Fiberhome 1000服務之客戶。服務期止。客戶之服務及報地址必須於登記服務前120日未曾使用「香港寬頻」之寬頻服務。3. 本計劃受有關條款及細則約束。4. 有關本計劃或就其推廣活動與有任何爭議，香港寬頻將擁有最終決定權，並保留權利隨時停止本計劃或此推廣活動。這更改有關之條款及服務內容在內實行通知。
1. Subscriber must subscribe to Hong Kong Broadband Network Limited (HKBN)'s broadband internet service on or before 31 May 2010. 2. The Service Plan is only applicable to subscribers who successfully install Fiberhome 1000 Service Plan in HKBN designated residential areas before 31 May 2010, offer available while quota lasts. The registration address of the subscriber must not have any record on using HKBN broadband service within 120 days prior to registration. 3. The service plan is subject to the terms and conditions, it is case of any dispute arising from the Service Plan, the decision of HKBN shall be final. HKBN also reserves all its rights to terminate the Service Plan, or to change these terms & conditions at any time without prior notice.

Ref: HKBN-Fiber1000-201004



Hong Kong Broadband Network Limited

“Best Fixed-Line and Broadband Carrier” of Telecom Asia Awards 2010

Hong Kong Broadband Network Limited is the fastest growing broadband service provider in Hong Kong. We deliver fibre-based symmetric 100Mbps to 1Gbps* broadband services with our self-built next generation network.

On behalf of Hong Kong people, we are honored to accept the prestigious Telecom Asia Awards 2010 – “Best Fixed-Line & Broadband Carrier”

* Local upload and download speed

www.hkbn.net





香港寬頻

榮獲 Telecom Asia 頒發「最佳固網及寬頻服務供應商」

香港寬頻現為香港增長速度最快之寬頻服務供應商，我們透過自建的新世代光纖網絡，提供由100Mbps至1000Mbps上下載對等*極速光纖寬頻上網服務。

我們致力使香港發展為「光纖綠洲」，吸引更多全球商業機遇，並以香港市民利益為依歸，提供最優質卓越的寬頻上網服務。對於獲得Telecom Asia 頒發「最佳固網及寬頻服務供應商」大獎，我們深感榮幸。

*本地之上下載速度

www.hkbn.net



Annex E***1000M Advertisement***

Date	Publication
	<u>Newspapers</u>
20, 23, 27, 28 April 2010 4 May 2010	<i>Oriental Daily</i>
14, 16, 19, 21, 22, 26 and 29 April 2010 3 and 12 May 2010	<i>Apple Daily</i>
14, 15, 20, 21, 24, 29 and 30 April 2010 3, 6, 10, 11 and 19 May 2010	<i>Headline Daily</i>
14, 16, 19, 21, 26, 28 and 30 April 2010 4, 7, 11, 13 and 18 May 2010	<i>Metro Daily</i>
15, 19 and 23 April 2010 5 and 17 May 2010	<i>am 730</i>
16, 18, 20, 22 and 29 April 2010 14 May 2010	<i>Ming Pao Daily</i>
14, 19, 23 and 27 April 2010 5, 10 and 13 May 2010	<i>Hong Kong Economic Times</i>
15, 22 and 28 April 2010 14 May 2010	<i>Hong Kong Economic Journal</i>
14, 16, 22 and 26 April 2010	<i>South China Morning Post</i>

7 and 12 May 2010	
15, 20, 23 and 27 April 2010 6 May 2010	<i>The Standard</i>
23 to 29 April 2010	<i>Take me Home</i> <i>(Hong Kong District)</i>
	<u>Magazines</u>
5 to 11 May 2010	<i>East Week</i>
22 to 30 April 2010 1 to 5 May 2010	<i>Next Magazine</i>
1 to 7 May 2010	<i>Ming Pao Weekly</i>
27 to 30 April 2010 1 to 10 May 2011	<i>PC Market</i>
22 to 28 April 2010 6 to 12 May 2011	<i>eZone</i>
7 to 13 May 2011	<i>Hi-Tech Weekly</i>
1 to 31 May 2011	<i>Automobile</i>
1 to 31 May 2011	<i>Men's Uno</i>
1 to 31 May 2011	<i>MR</i>
5 to 31 May 2011	<i>HD AV</i>

Time Advertisements

Date	Publication / Location of Display
	<u>Newspapers</u>
26 and 28 May 2010 1, 4 and 10 June 2010	<i>Oriental Daily</i>
26, 27 and 31 May 2010 2, 3, 7 and 8 June 2010	<i>Apple Daily</i>
26 May 2010 3, 4, 7 and 8 June 2010	<i>Headline Daily</i>
26 and 28 May 2010 1, 2, 4 and 8 June 2010	<i>Metro Daily</i>
27 and 31 May 2010 3 and 9 June 2010	<i>am 730</i>
26 and 27 May 2010 1 and 9 June 2010	<i>Ming Pao Daily</i>
26 and 28 May 2010 1, 7 and 10 June 2010	<i>Hong Kong Economic Times</i>
27 and 31 May 2010 2 June 2010	<i>Hong Kong Economic Journal</i>
26 May 2010 3 June 2010	<i>South China Morning Post</i>

27 and 31 May 2010	<i>The Standard</i>
28 to 31 May 2010 1 to 10 June 2010	<i>Take me Home</i> <i>(Hong Kong District)</i>
	<u>Magazines</u>
8 to 14 June 2010	<i>East Touch</i>
3 to 16 June 2010	<i>Milk</i>
2 to 15 June 2010	<i>East Week</i>
3 to 16 June 2010	<i>Next Magazine</i>
31 May 2010 1 to 13 June 2010	<i>Weekend Weekly</i>
4 to 17 June 2010	<i>U Magazine</i>
1 to 14 June 2010	<i>PC Market</i>
10 to 16 June 2010	<i>eZone</i>
	<u>Billboards</u>
1 to 30 June 2010	<i>Hung Hing Road, Wanchai</i> <i>(Cross Harbour Tunnel</i> <i>Entrance)</i>
1 to 30 June 2010	<i>Admiralty Centre, Admiralty</i>

Leaflet

Date	Location of Distribution
Between late April and early June 2010	<i>HKBN's Lok Fu Plaza outlet</i>

Award Advertisement

Date	Publication
	<u>Newspapers</u>
3 May 2010	<i>Apple Daily</i>
3 May 2010	<i>Headline Daily</i>
4 May 2010	<i>Metro Daily</i>
5 May 2010	<i>am 730</i>
7 May 2010	<i>South China Morning Post</i>
6 May 2010	<i>The Standard</i>
	<u>Magazines</u>
4 to 10 May 2010	<i>PC Market</i>
6 to 12 May 2010	<i>eZone</i>
7 to 13 May 2010	<i>Hi-Tech Weekly</i>

TELECOMMUNICATIONS AUTHORITY STATEMENT

**Misleading or Deceptive Representations Concerning the Provision of
Residential Broadband Internet Access Services to Consumers in
Hong Kong**

27 February 2008

INTRODUCTION

1. This statement sets out the Best Practice Indicators for the selling of residential broadband internet access services in Hong Kong. Mis-selling activities of internet service providers (ISPs) can amount to misleading or deceptive conduct. Such conduct is unlawful according to section 7M of the Telecommunications Ordinance (the Ordinance). The statement complements the Telecommunications Authority (the Authority)'s general Guidelines on Misleading or Deceptive Conduct in Hong Kong Telecommunications Markets issued on 21 May 2003.

2. The Best Practice Indicators identified in this statement, when correctly adopted by ISPs, will prevent the incidence of misleading or deceptive conduct in the advertising and selling of broadband services. Providing the industry with best practice indicators aims at ensuring that Hong Kong consumers would be better informed when choosing among service providers and service packages, so that all sections of the public would be better able to enjoy the benefits of the very competitive local broadband services market.

BACKGROUND

3. In Hong Kong, broadband internet access services are provided to 76% of all households¹, which is amongst the highest market penetration rates in the world. The speed of our broadband services is, on the whole, faster than in many other countries where broadband services include internet access speeds well below the

¹ As of November 2007.

threshold Mbps rate adopted in Hong Kong.²

4. Hong Kong is also a leader in the rollout of multiple broadband networks and the use of state-of-the-art fibre optic cabling to individual buildings. Some 79% of Hong Kong households now have direct connectivity with at least one alternative broadband customer access network.

5. Hong Kong's success in these areas can be linked to a strong facilities based competitive environment, vigorous and creative marketing campaigns and a community receptive to the latest technology and new products and services. The competition laws which apply in this sector to prevent abuses of market power, price-fixing and market sharing arrangements which might otherwise disadvantage consumers, also contribute to the free and open competition enjoyed by broadband users in Hong Kong.

6. Despite this success in creating an effective market, there are risks of local residential users being misled or deceived in connection with the sale and supply of broadband internet access services, which can be technically complex and confusing.

7. To gain a better understanding of how broadband services are perceived by typical residential users and to identify areas where available information may not be adequate for consumers to make informed choices, the Office of the Telecommunications Authority (OFTA) commissioned the Social Science Research Centre of the University of Hong Kong to conduct a survey of residential broadband use. The results were published in May 2007³.

8. The survey results show that the majority of households (some 87%) are in fact not dissatisfied with the service they are getting. There are nevertheless, indications from the survey and from other sources⁴ that many in the community are not yet fully conversant with the use of computers and the internet in the home.

² In Hong Kong, the term "broadband service" typically refers to internet access providing transmission speeds above 1.5 Mbps (Megabits per second). In comparison, the US Federal Communications Commission sets the standard for broadband access as any service providing a transmission speed of greater than 200 kilobits per second (kbps) (kilobits per second). In the UK, broadband data rates are typically 512 kbit/s for downloading and 256 kbit/s for uploading. The ITU Standardization Sector (ITU-T) recommendation I.113 has defined broadband as a transmission capacity that is faster than ISDN primary rate at 1.5 to 2 Mbits.

³ The Authority statement on survey on residential broadband internet access services dated 2 May 2007.

⁴ OFTA's investigations have revealed that as many as 85% of the calls made by customers to ISPs' customer service hotlines relate to problems which are outside of the operators' practical control and legal responsibility.

These people do not yet have an adequate grasp of the technical issues and are therefore more vulnerable to being misled by technical terminology.

9. The number of consumer complaints about residential broadband internet access services is tiny relative to the number of service subscriptions in place⁵. OFTA is nonetheless undertaking a number of initiatives regarding the broadband industry in recognition of the expansion of broadband use within the community and the transition of households to newer technologies and new and additional computer uses.

10. These initiatives include a broad based education programme undertaken in conjunction with other stakeholders such as the Consumer Council about the use of computers and the internet in the home. OFTA has also reached agreement with five major ISPs on a set of performance pledges which they have already published on their respective websites relating to certain key elements of their services. In addition, through this statement, OFTA is establishing basic best practice indicators to prevent misleading and deceptive marketing. OFTA is moreover working with certain telecommunications operators in developing a pilot programme for Customer Complaint Settlement Scheme, which would provide case studies and first-hand administrative experience valuable for the discussion of setting up a specialised forum in the long term for the resolution of disputes between companies and individual consumers.

BEST PRACTICE INDICATORS

11. From its case by case examination of the wide range of complaints about internet access made to the Consumer Council, many of which are in fact contractual disputes outside the jurisdiction of the Authority, and from its investigation of individual cases of alleged misleading or deceptive conduct concerning internet access services, OFTA has been able to observe factors which make it more likely that representations by ISPs, either in the form of marketing materials or oral representations would become misleading or deceptive. This has enabled the formulation of best practice indicators, which are a set of simple, practical measures to be observed in the selling and marketing of broadband services, thereby making it

⁵ As of the end of 2007, there were approximately 1.7 million residential broadband connections in Hong Kong. In that same year, the Consumer Council received some 3,700 internet related consumer complaints.

much less likely that operators will in fact breach section 7M of the Ordinance. The indicators are set out below.

Paying attention to the needs and level of understanding of the potential audience

12. Service providers must take care to ascertain the sort of people likely to receive the messages in particular sales communications, including any sales pitch used in direct sales to individual consumers, and what the likely state of the audience's technological appreciation is.

13. In a direct sales scenario, a salesperson should be able to gather a general impression of a potential customer's extent of knowledge in broadband or computer technology through talking to the customer. Where the customer patently demonstrates a lack of technological understanding, the salesperson will tread a dangerous path if they continue to highlight the technical aspects of the broadband service without adequate and meaningful explanations given in plain language.

14. Marketing communications must always be designed with full recognition that many in the potential audience may not be technically minded and may not fully understand the workings of computers, the internet, and the operations of telecommunications companies. For example, where the intended audience of the marketing materials is the general public, as in the case of advertisements in the daily papers, operators should recognise that the recipients of the messages will come from different walks of life, with levels of technological understanding ranging from the very low to very high.

15. This means providers must ascertain what information the potential audience needs in order to make sense of the technical issues raised by the particular communication and they must present that information, or provide references to it, in the communication, and with a high degree of clarity.

Providing clear and relevant technical information

16. When marketing communications about internet services include technical information about the services, the technical information provided must be relevant and meaningful from the perspective of consumers considering which internet service best suits their particular needs and budgets.

17. This means providers must ascertain what information the target audience needs to have in order to understand the key technical references, and the information must be provided with a high degree of clarity.

18. Technical terms to do with the technology, speed or other performance aspects of the service must be accurately and consistently presented by sales people and in promotional materials.

19. Providers must not make use of technical references and descriptions which obscure or confuse the key buying considerations. For example, boasting the deployment of a certain broadband technology, thus implying an overall superiority of the broadband service over services provided by other technologies, without meaningful explanation given in relation to what the technology means to the customers from a user's perspective may be misleading. The actual performance of a broadband service can be affected by many other factors unrelated to the technology being deployed. Moreover, a user's appreciation of the performance of broadband service is ultimately not dependent on what technology is being used, but how the service is being experienced from the user's perspective.

20. There must be adequate explanations, or references to explanation sources, for all abbreviations and acronyms.

Including relevant qualifications

21. References to the technical performance of the service must be accompanied by all relevant qualifications concerning that performance.

22. In particular, claims about the transmission speed of the service must be clearly and prominently qualified by a description of which segment and direction of the pathway between the destined pages on the world wide web and a consumer's computer the speed claim relates to, and what that speed means for the typical use most people in the potential audience are likely to have for the service.

23. The qualifications must reflect the expectations which most of the people in the potential audience are likely to have for their use of the service, as well as the likelihood that many in the potential audience may not be technology savvy.

Avoiding commonly misunderstood terms

24. Service providers should explain the distinguishing qualities of their services accurately and meaningfully from a consumer's perspective, and should not rely on stock phrases that many ordinary consumers are unlikely to fully understand. The "dedicated", "exclusive" or "shared" nature of a broadband service should rarely if ever be used as a primary distinguishing feature⁶.

Disclosing bundling effects

25. Where the bundling of services may mean that consumers experience lower than reasonably anticipated broadband service quality during times of concurrent service use, service providers should ensure that prospective subscribers are fully aware of these potential effects.

CONCLUSION

26. The identification of these Best Practice Indicators is consistent with the approach adopted in the Authority's previous report on misleading or deceptive practices in relation to the mis-selling of fixed-line services in Hong Kong. The Report on Mis-selling of Fixed-line Telecommunications Services to Consumers in Hong Kong which was published on 29 March 2005, has successfully contributed to greater awareness of section 7M issues and an observable reduction in established mis-selling cases.

27. In those cases in which the Authority determines that section 7M has been breached, the degree to which the broadband service provider in question has sought to implement the above Best Practice Indicators will be a relevant factor in determining an appropriate sanction.

The Office of the Telecommunications Authority

27 February 2008

⁶ For a more detailed discussion of the misunderstandings customers may have regarding the terms "dedicated", "exclusive" and "shared", see paragraphs 3.15 – 3.18 of the statement "Consumer Information in relation to Broadband Internet Access Services" issued by the Authority on 12 May 2006.