

**FINAL DECISION OF
THE COMMUNICATIONS AUTHORITY**

**BREACH BY
SMARTONE MOBILE COMMUNICATIONS LIMITED OF
GENERAL CONDITION 12.1 OF UNIFIED CARRIER LICENCE**

Licensee Concerned:	SmarTone Mobile Communications Limited ("SmarTone")
Issue:	Use of radiocommunications installation not specified in Schedule 3 to the Unified Carrier Licence ("UCL") held by SmarTone
Relevant Instruments:	General Condition ("GC") 12.1 of SmarTone's UCL No. 018
Decision:	Breach of GC 12.1 of SmarTone's UCL No. 018
Sanction:	Warning
Case Reference:	OFCA/O/F/37 C

BACKGROUND

In September 2012, the Office of the Communications Authority ("OFCA") received a complaint from a member of the public about the suspected installation of an unauthorised radio base station in Lung Kwu Tan, Tuen Mun ("the Station"). OFCA has conducted an investigation into the complaint and found that SmarTone has used the Station for provision of a public telecommunications network service, which is a radiocommunications installation not specified in Schedule 3 to its UCL.

2. OFCA completed its investigation and submitted its finding to the Communications Authority (“CA”) on 26 January 2013. Having considered the finding of OFCA, the CA issued its Provisional Decision to SmarTone on 31 January 2013 and invited it to make representations within 14 days. SmarTone submitted its representations to OFCA on 14 February 2013.

THE CA’S CONSIDERATIONS AND DECISION

3. GC 12.1 of the SmarTone’s UCL sets out the requirements of radiocommunications installations. It specifies that *“each radiocommunications installation operated by or on behalf of the licensee shall be used only at the location and with emissions and at the frequencies and of the classes and characteristics specified in Schedule 3 to this licence and with such power and aerial characteristics as are specified in that Schedule in relation to the class and characteristics of the emission in use”*.

4. Having considered the findings of the OFCA’s investigation and having been satisfied that SmarTone has been afforded a reasonable opportunity to make representations, the CA is of the view that SmarTone has failed to comply with GC 12.1 of its UCL in respect of use of a radiocommunications installation not specified in Schedule 3 to its UCL.

5. In considering the sanction that it should impose, the CA notes that -

- (a) this is the first occasion where SmarTone is found to commit a breach of this nature;
- (b) SmarTone has taken appropriate and timely remedial actions including the dismantling of the Station to rectify the breach;
- (c) the Station has been used for improving the radio coverage to serve its customers in the area of Lung Kwu Tan, Tuen Mun; and

- (d) GC 12.1 aims to ensure compliance of radiocommunications installations with telecommunications requirements in respect of electromagnetic compatibility and radiation safety. The Station fulfilled these telecommunications requirements notwithstanding that it is not specified in Schedule 3 to SmarTone's UCL.

6. Having considered the above and all circumstances of this case, the CA has decided to issue a warning to SmarTone in the form of this decision for it to strictly observe GC 12.1 of its UCL in future.

The Communications Authority
February 2013