

**FINAL DECISION OF THE  
COMMUNICATIONS AUTHORITY**

**ALLEGED MISLEADING OR DECEPTIVE REPRESENTATIONS  
BY HUTCHISON GLOBAL COMMUNICATIONS LIMITED  
IN RELATION TO THE CONTRACT RENEWAL OF  
RESIDENTIAL FIXED LINE SERVICE**

<b>Licensee concerned:</b>	Hutchison Global Communications Limited (“HGC”)
<b>Issue:</b>	The representations made by the salesperson about the contract renewal of HGC’s residential fixed line service were alleged to be misleading or deceptive
<b>Relevant Instruments:</b>	Section 7M of the Telecommunications Ordinance (Cap. 106) (“TO”)
<b>Decision:</b>	Breach of section 7M of the TO
<b>Sanction:</b>	Financial penalty
<b>Case Reference:</b>	7M/2/13-13

**THE COMPLAINT**

On 13 March 2013, the Office of the Communications Authority (“OFCA”) received a consumer complaint alleging that the representations made by a salesperson of HGC in relation to the renewal of the complainant’s residential fixed line service contract were misleading or deceptive.

2. The complainant alleged that, on 10 March 2013, he received a call from a salesperson of HGC (the “Salesperson”) stating that his existing residential fixed line service contract with HGC would expire in July 2013, and

HGC would offer to renew his contract at an average monthly fee of HK\$48 for 24 months. The Salesperson told the complainant that the terms of the new offer was the same as his existing contract, except for a longer contract period from 18 months to 24 months. Despite that the complainant had repeatedly asked the Salesperson whether he was paying HK\$38 per month instead of HK\$48 per month, the complainant alleged that the Salesperson had reaffirmed to him that it was HK\$48 per month according to the information from the Salesperson's computer. Based on the Salesperson's representations, the complainant accepted HGC's renewal offer.

3. Subsequently, on the same day, the complainant checked his existing contract and found that he was paying an average monthly fee of HK\$38, not HK\$48 as per the Salesperson's advice. The complainant immediately called HGC's hotline for clarification. A customer service staff of HGC (the "CS Staff") replied that the Salesperson was wrong and the complainant was paying an average fee of HK\$38 per month under the existing contract. The CS Staff agreed to amend the renewal offer to an average fee of HK\$38 per month for 24 months. The complainant considered that the Salesperson had misled him into renewing the residential fixed line service contract with HGC at the very first instance.

## **THE INITIAL ENQUIRY**

4. On 26 March 2013, OFCA wrote to HGC requesting it to provide the voice recordings of the two telephone conversations between the complainant and the Salesperson and between the complainant and the CS Staff, respectively, on 10 March 2013. HGC was also invited to comment on the complaint. On 17 April 2013, HGC submitted that the complaint could not be substantiated for the reasons as summarized below –

(a) Information of the renewal offer was correctly provided

The Salesperson had presented to the complainant the correct terms of the renewal offer, including the average monthly fee (i.e.

HK\$48) and the period of the contract (i.e. 24 months). The complainant had voluntarily and consciously accepted the offer with the terms provided above.

- (b) Customer's decision whether to accept the new offer or not should be based on the terms of the renewal offer

Customers are placed in the best position to know how much they have been paying each month. For average consumers to accept or reject a renewal offer, they would consider the terms of the new offer (most commonly in consideration of the price and the contract period) rather than the terms of the existing contract, which could only be treated as a reference for comparison.

- (c) Remedial action was promptly taken

When the complainant called the CS Staff, the CS Staff had duly checked the payment details of the complainant under his existing contract and immediately as a gesture of goodwill offered to revise the renewal offer to HK\$38 per month. This was the same price that the complainant was paying under his existing contract and the complainant had accepted the revised offer.

5. HGC said according to its Code of Conduct (the "Code"), all telesales staff were strictly forbidden to release any incorrect information to customers, including exaggerated or ambiguous statements. In case of any misunderstandings, the telesales staff should clarify the matters with the customers. In this case, however, HGC submitted that the conduct of the Salesperson had deviated from the Code. HGC considered that the Salesperson should have taken time to check with his team leader the complainant's full profile before answering any questions raised by the complainant in relation to his existing contract.

6. HGC also provided to OFCA the voice recordings of the two telephone conversations between the complainant and the Salesperson and

between the complainant and the CS Staff respectively. OFCA has carefully listened to the telephone conversations in the voice recordings and noted that the contents of the conversations are generally consistent with the complainant's allegation, except that for the amount of monthly fee paid under the existing contract, the Salesperson first stated the figure of HK\$48, then revised it to around HK\$43 or HK\$44 when being asked by the complainant for the calculation details.

## **THE INVESTIGATION**

7. Having considered the complainant's allegation, HGC's comments on the complaint, and the voice recordings of the two telephone conversations between the complainant and the Salesperson and between the complainant and the CS Staff respectively, OFCA considered that there were reasonable grounds for the Communications Authority ("CA") to suspect that there might be a breach of section 7M of the TO by HGC. 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.”*

8. On 27 June 2013, HGC was advised that an investigation into the complaint had commenced. HGC was requested to provide further information in relation to the complaint and to make representations that it wished the CA to take into account in deciding on the matter.

### **HGC's Representations**

9. On 11 July 2013, HGC submitted its representations that it had not engaged in misleading or deceptive conduct in breach of section 7M of the TO

in the present case. The salient points of HGC's representations are summarized below –

- (a) The basis on which the Salesperson formed the view that the complainant's average monthly fee was HK\$43 or HK\$44, but not HK\$38

HGC said when contacting customers for contract renewal, its telesales staff were provided with the details of the plan (including contract period, tariff, average monthly fee and discount period) to be offered to the customers. However, information about the customers' existing monthly fee was not provided to the telesales staff as this information was seldom asked by the customers.

HGC submitted that the Salesperson had left the company's employ shortly after the incident, and hence it was unable to obtain an explanation from the Salesperson on why a monthly charge of HK\$43 or HK\$44 was quoted to the complainant. However, upon review of the plans previously sold by the Salesperson, HGC found that he had experience in promoting two renewal plans, one at the price ranging from HK\$43 to HK\$68 and another ranging from HK\$48 to HK\$78. Based on the voice recording of the telephone conversation between the complainant and the Salesperson on 10 March 2013, HGC considered that the Salesperson had simply quoted the lower price of the two service plans which he had previously promoted, believing that it should be the existing monthly fee paid by the complainant.

HGC was of the view that this incident was solely caused by the Salesperson's inadvertence, for which he had no intention to mislead or deceive the complainant. In any case, HGC reiterated that the Salesperson had presented the correct terms of the renewal offer to the complainant. HGC considered that the complainant had voluntarily and consciously accepted the renewal offer. It was not until the complainant asked about his existing monthly fee as a

reference that the Salesperson gave the incorrect information. HGC said it had acted responsibly to rectify the Salesperson's mistake by revising the complainant's renewal offer to an average fee of HK\$38 per month, and as such no monetary loss was suffered by the complainant.

(b) The Code and the Salesperson's failure to check the complainant's customer profile

HGC said under the Code, all telesales staff were required to handle customer matters diligently and correctly and were forbidden to release any incorrect information to customers. The telesales staff should clarify the misunderstanding with the customers and make rectification during the sales process. HGC advised that upon recruitment, every telesales staff was provided with the Code and received sales training. Any staff found to have committed any form of misleading or deceptive conduct would be subject to severe penalties, including termination of employment.

HGC admitted that the Salesperson had failed to comply with HGC's internal practice by putting the complainant on hold during the telesales conversation and checking with his supervisor who had sole access to the customer's full profile.

(c) No similar complaint

HGC submitted that it did not receive any complaint similar to the present case in the past 12 months.

(d) Remedial measures

HGC said following the receipt of this complaint from OFCA on 26 March 2013, it had taken immediate action to include this case in the sales training sessions in April 2013 and issued a notice to the telesales staff stressing the importance of compliance with the

Code and section 7M of the TO. In addition, HGC had implemented additional measures to further enhance its monitoring and control over the conduct of its telesales staff by their supervisors and the quality assurance team.

10. On 25 November 2013, HGC submitted its further representations that in view of the mitigating factors it had put forward, and in particular that this case concerned the conduct of a single salesperson acting against its instructions, HGC believed that the imposition of a financial penalty in this case for breach of section 7M of the TO would be disproportionate, harsh and unfair.

## **OFCA'S ASSESSMENT**

11. Having considered the available evidence and taken into account the representations made by HGC, OFCA's assessment is set out below:

(a) The Alleged Misrepresentations

There is no dispute that the Salesperson had given incorrect information about the monthly fee paid by the complainant under the existing contract. Initially, the Salesperson told the complainant that it was on average HK\$48 per month; then revised the figure to around HK\$43 or HK\$44 per month when being asked about the calculation details. The amounts quoted in all cases were higher than the correct amount of HK\$38 per month under the existing contract of the complainant.

(b) The "Reasonable Person" Test

Regarding the terms of the existing contract, OFCA disagrees with HGC's views that they are not relevant to customers in deciding whether to accept or reject a renewal offer. For a reasonable person, whether there is a price difference between the existing contract and the new contract would likely be an important piece of

price information to consider in deciding whether to accept the renewal offer. Particularly for this case, the amount of monthly fee under the existing contract is even more relevant as the complainant was asked to sign a new contract with a longer contract period than his existing one by six months.

Regarding HGC's views that customers are placed in the best position to know how much they have been paying each month, OFCA considers that the relevant test for establishing a breach of section 7M is whether a "reasonable person" would be misled or deceived by the licensee's conduct. A "reasonable person" is an ordinary member of the target audience at whom the conduct is directed.<sup>1</sup> In this case, it would be a specific segment of HGC's existing customers at whom the telesales calls were directed, and such group comprises a broad stratum of people with varying degrees of knowledge of how much they had been paying each month.

OFCA considers that, on the one end, there were customers who were fully aware of their existing monthly fees. At the other end, there were customers who could not readily recall how much they had been paying each month when prompted by telesales staff to make a decision on whether or not to accept a contract renewal offer. All these people were nonetheless the target customers of the telesales calls. OFCA has to be satisfied that even the target customers at the lower end of the stratum would not be misled or deceived by the misrepresentations made by the Salesperson.<sup>2</sup> In

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<sup>1</sup> See paragraphs 2.11 of the "Guidelines on Misleading or Deceptive Conduct under Section 7M of the Telecommunications Ordinance" (the "Section 7M Guidelines") which is available at [http://tel\\_archives.ofca.gov.hk/en/report-paper-guide/guidance-notes/gn\\_20030521.pdf](http://tel_archives.ofca.gov.hk/en/report-paper-guide/guidance-notes/gn_20030521.pdf).

<sup>2</sup> In Case No. T47/07 which concerned broadband speed representations in printed advertisements, the former Telecommunications Authority ("TA") decided 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. In that case, the former TA had to be satisfied that even the target audience at the lower end of the stratum would not be misled or deceived by the advertisements over the speeds of the particular broadband services. The case summary can be found in [http://tel\\_archives.ofca.gov.hk/en/ca\\_bd/case\\_closed/t47\\_07.pdf](http://tel_archives.ofca.gov.hk/en/ca_bd/case_closed/t47_07.pdf).

this case, given that there were a number of misquotes by the Salesperson, OFCA is satisfied that a target customer who was not fully aware of the existing monthly fee would be misled or deceived into believing that he was paying a higher monthly fee than the actual fee he was in fact paying under the existing contract.

(c) No intention to mislead or deceive the complainant

Although HGC considered that the misrepresentations made by the Salesperson were due to his inadvertence without the intention to mislead or deceive the complainant, OFCA considers that that it is not necessary for the CA to find that a licensee had the intention to mislead or deceive anyone for that licensee to be in breach of section 7M of the TO.<sup>3</sup> According to the “Guidelines on the Imposition of Financial Penalty under Section 36C of the Telecommunications Ordinance” (the “Guidelines”) issued by the CA, the degree of deliberation would be considered by the CA as an aggravating factor in deciding the level of penalty if a breach is established.

(d) Acting against the Code

While the Salesperson was acting against the Code when making the misrepresentations to the complainant, OFCA notes that the Court of Appeal has held that “*the licensee must be responsible for what that employee does in the course of his employment and in carrying out the duties which the employee does as part of his employment*”.<sup>4</sup> In the present case, the Salesperson had made the misrepresentations to the complainant in the course of promoting the renewal offer as part of his duties as HGC’s telesales staff. HGC is therefore liable for such misconduct of the Salesperson.

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<sup>3</sup> See paragraphs 4.13 of the Section 7M Guidelines.

<sup>4</sup> *I-Cable Webserve Limited v The Telecommunications Authority*, CACV 329/2008, at paragraph 13.

(e) HGC's remedial actions

As regards HGC's submission that it had rectified the mistake promptly and implemented additional measures to strengthen the sales process to prevent similar incidents from happening, such action and measures though are welcome and encouraged, are irrelevant to the CA's assessment as to whether the conduct of the Salesperson was misleading or deceptive in breach of section 7M of the TO. Such remedial measure would be considered as a mitigating factor in considering the level of penalty after establishing a breach of section 7M.

12. Having considered the information provided by the complainant and HGC, and against the analysis set out in paragraph 11 above, OFCA considers that the Salesperson had made representations to the complainant that he was paying a higher monthly fee than the actual fee he was in fact paying under the existing contract and such information was relevant to customers in deciding whether to accept or reject a renewal offer with a longer contract period than that of the existing contract. **By applying the "reasonable person" test, OFCA considers that a reasonable person in the circumstances of the complainant would have been misled or deceived by the representations made by the Salesperson in the promotion of the renewal offer. The representations made by the Salesperson in the telephone conversation with the complainant were therefore misleading or deceptive in breach of section 7M of the TO.**

## **THE CA'S ASSESSMENT AND DECISION**

13. After examining the facts of the case, the information and representations provided by the complainant and HGC, including the further representations submitted by HGC on 25 November 2013, the CA affirms OFCA's assessment that HGC had engaged in misleading or deceptive conduct in breach of section 7M of the TO. A financial penalty should be imposed.

14. This is the third occasion on which a financial penalty is imposed on HGC under section 7M of the TO, and the maximum penalty stipulated by the TO is HK\$1,000,000. In considering the appropriate level of financial penalty in this case, the CA has had regard 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.

15. In considering the gravity of the breach and therefore the starting point for the level of penalty, the CA notes that the Salesperson had repeatedly stated the wrong amounts of existing monthly fee to the complainant. While considering that this was a substantive breach of section 7M of the TO, the CA also notes that HGC had given clear guidance to its telesales staff under the Code, that all telesales staff were strictly forbidden to release any incorrect information to customers. On the other hand, OFCA and HGC had only received the present complaint against the company concerning misrepresentations of this nature. There is no evidence to suggest that a large number of consumers had been misled or deceived.

16. In consideration of the above, the CA is of the view that the appropriate starting point for determining the level of financial penalty is HK\$80,000.

17. On mitigation factor, the CA notes that HGC has been cooperative with OFCA throughout the investigation. HGC had also promptly implemented additional measures to strengthen the sales process to prevent similar incidents from happening. The CA has not identified any aggravating factors.

18. Having carefully considered the circumstances of the case and taking all factors into account, the CA concludes that in this case of the third occasion on which a financial penalty is imposed under section 7M of the TO on

HGC, the penalty which is proportionate and reasonable in relation to the breach concerned is HK\$50,000.

**The Communications Authority**  
**December 2013**